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Nos. 93-1504 and 93-1563

Supreme Court, U.S.
FILED
APR 25 1994
OFFICE OF THE CLERK

In The

Supreme Court of the United States

October Term, 1993

No. 93-1504

THE CELOTEX CORPORATION,

Petitioner,

v.

BENNIE EDWARDS AND JOANN EDWARDS,

Respondents.

No. 93-1563

NORTHBROOK PROPERTY AND CASUALTY INSURANCE COMPANY,

Petitioner,

v.

BENNIE EDWARDS AND JOANN EDWARDS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

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BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether Rule 65.1 of the Federal Rules of Civil Procedure allows enforcement of a supersedeas bond, posted to stay execution of judgment against a defendant that filed for reorganization after the judgment became final, against the non-bankrupt surety that issued the bond, even though a bankruptcy court in another circuit has attempted to restrain execution on supersedeas bonds posted in favor of the debtor under section 105(a) of the Bankruptcy Code.

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STATUTES AND RULES INVOLVED

11 U.S.C. § 105(a) provides, in pertinent part,

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.

Rule 62(d) of the Federal Rules of Civil Procedure provides,

> **Stay Upon Appeal.** When an appeal is taken the appellant by giving a supersedeas bond may obtain a stay subject to the exceptions contained in subdivision (a) of this rule. The bond may be given at or after the time of filing the notice of appeal or of procuring the order allowing the appeal, as the case may be. The stay is effective when the supersedeas bond is approved by the court.

Rule 65.1 of the Federal Rules of Civil Procedure provides, in pertinent part,

> Whenever these rules . . . require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiciton of the court and irrevocably appoints the clerk of the court as the surety's agent upon whom any papers affecting the surety's liability on the bond may be served. The surety's liability may be enforced on motion without the necessity of an independent action.

STATEMENT OF THE CASE

More than five years ago, a federal jury in Wichita Falls, Texas found that Petitioner The Celotex Corporation ("Celotex") tortiously caused Respondent Bennie Edwards to sustain serious personal injuries, and awarded Bennie Edwards and his wife Joanne compensatory and punitive damages. The United States District Court for the Northern District of Texas entered judgment on the jury's verdict on April 17, 1989. To stay immediate execution of the judgment pending appeal, Celotex posted a supersedeas bond executed by Petitioner Northbrook Property and Casualty Insurance Company ("Northbrook") pursuant to Rule 62(d) of the Federal Rules of Civil Procedure. The terms of the bond require Northbrook to pay the judgment, plus specified interest, if the judgment is affirmed and Celotex does not pay it. The district court approved the bond on June 6, 1989. Some fifteen months later, the Fifth Circuit affirmed the judgment. *Edwards v. Armstrong World Industries, Inc.*, 911 F.2d 1151 (5th Cir. 1990). The Fifth Circuit's mandate, making the judgment final and enforceable, issued October 12, 1990. That same day, Celotex filed a petition for reorganization in the United States Bankruptcy Court for the Middle District of Tampa.

On May 3, 1991, the Edwards filed a motion to enforce the terms of the supersedeas bond against Northbrook in the United States District Court for the Northern District of Texas pursuant to Rule 65.1 of the Federal Rules of Civil Procedure. In their motion, the Edwards sought recovery only from Northbrook; they did not seek any recovery from Celotex or from Celotex's property. Celotex nevertheless opposed the motion, arguing that

the Edwards' motion was a "proceeding against the debtor" and sought "property of the [debtor's] estate" in violation of the automatic bankruptcy stay, 11 U.S.C. § 362(a). Celotex also pointed out that five days after its bankruptcy filing, the bankruptcy judge, exercising the "equitable powers" conferred on him by section 105(a) of the Bankruptcy Code, "extended" the automatic stay by enjoining all proceedings "involving" Celotex, even those in which "a supersedeas bond has been posted." Celotex App. 28; Northbrook App. 35. Northbrook also opposed the Edwards' motion, urging the same arguments as those advanced by Celotex. Neither Celotex nor Northbrook contended that the conditions for triggering Northbrook's obligation under the bond had not been satisfied.

The Edwards contended that the automatic stay did not prevent the district court from granting their motion to enforce Northbrook's obligation under the supersedeas bond, because the motion neither sought relief from Celotex nor sought possession of any property of Celotex. The Edwards also argued that the bankruptcy court in Florida had no jurisdiction or power to enjoin enforcement of the terms of a supersedeas bond against Northbrook, since Celotex had no property interest in the bond. The district court agreed with the Edwards, and ordered that the Edwards could execute on the bond. Celotex, but not Northbrook,[1] appealed the order allowing execution on the bond to the Fifth Circuit.

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[1] Respondents oppose the petition of Northbrook Property and Casualty Insurance Company for leave to intervene as a party for the purpose of filing its own petition for certiorari. It is true that by affirming the order of the district court allowing

The Fifth Circuit affirmed in a published opinion. *Edwards v. Armstrong World Industries, Inc.*, 6 F.3d 312 (5th Cir. 1993). Citing the opinion of the Fourth Circuit in *Willis v. Celotex Corp.*, 978 F.2d 146 (4th Cir. 1992), *cert. denied*, 113 S.Ct. 1846 (1993) and the bankruptcy court's own opinion in *In re Celotex Corp.*, 128 B.R. 478 (Bankr.M.D.Fla. 1991), the Fifth Circuit found that the Edwards' motion did not implicate property in which Celotex had an interest, and thus rejected Celotex's contention that the bankruptcy court had exclusive jurisdiction over claims involving the bond. 6 F.3d at 315; Celotex App. 6-8; Northbrook App. 5-6. Because Celotex's property was not involved in the Edwards execution attempts, the Fifth Circuit found that the automatic stay did not prevent enforcement of the bond obligation against Northbrook. 6 F.3d at 315; Celotex App. 6-8; Northbrook App. 5-6.

Respondents to execute on a supersedeas bond against Northbrook, the judgment of the court of appeals directly affects Northbrook. However, Northbrook did not appeal the order of the district court or attempt to participate as a party in the court of appeals, apparently believing that Celotex would adequately represent its interests on appeal. Northbrook has made no showing of the type of extraordinary circumstances which would allow it to participate as a party at this stage of the proceedings despite its failure to participate as a party below. Northbrook's petition for leave to intervene, and its petition for writ of certiorari, should therefore be summarily denied.

Respondents do not, however, oppose Northbrook's suggestion in the alternative that its petition for certiorari be treated as an *amicus curiae* brief in support of Celotex's petition for writ of certiorari.

Turning to the "more difficult issue" raised by Celotex's appeal, the Fifth Circuit then considered whether the equitable powers conferred on the bankruptcy court by section 105(a) of the Bankruptcy Code allowed the bankruptcy court to interfere with the Edwards' attempt to collect from Northbrook, a stranger to the Celotex bankruptcy, in federal court in Texas.

The Fifth Circuit found that the bankruptcy court was without power to enjoin collection attempts against non-debtors that do not implicate the debtor's property, and thus held that the district court was correct in ordering execution on the supersedeas bond notwithstanding the injunction. The court acknowledged that section 105(a) generally authorizes bankruptcy courts to enjoin proceedings that threaten the integrity of a bankrupt's estate, but observed that "the integrity of the estate is not implicated in the present case because the debtor has no present or future interest in this supersedeas bond." 6 F.3d at 320; Celotex App. 19; Northbrook App. 16. The court concluded that "[w]hatever the ultimate scope of section 105, it does not extend so far as to give the bankruptcy court authority over a supersedeas bond in which it has no interest." *Id.* The Fifth Circuit expressly acknowledged that its holding conflicted with that of the Fourth Circuit in *Willis*, in which the Fourth Circuit reversed an order nearly identical to the order involved in the instant case based on the Celotex bankruptcy court's section 105(a) stay order. 6 F.3d at 320; Celotex App. 19; Northbrook App. 16.[2]

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[2] Judge Jones issued a concurring opinion in which she noted that because the bankruptcy court's section 105(a) stay

In denying Celotex's motion for rehearing and suggestion for rehearing en banc, the Fifth Circuit took the opportunity to explain that it had not reversed an order of a bankruptcy court in a different circuit (as claimed by Celotex), but had instead affirmed an order by an inferior court within its jurisdiction which was premised on a finding that the bankruptcy court's order was ineffective. Thus, the Fifth Circuit panel observed, "we have not held that the bankruptcy court in Florida was necessarily wrong; we have only concluded that the district court, over which we *do* have appellate jurisdiction, was right." 6 F.3d at 321; Celotex App. 22 (emphasis added).

ARGUMENT

The Edwards agree with Petitioners Celotex and Northbrook that the Fifth Circuit's decision in this case upholds a collateral attack on a stay order issued by a bankruptcy judge in another circuit. The Edwards also agree with Petitioners that the decision in this case expressly and directly conflicts with the decision of the Fourth Circuit in *Willis v. Celotex Corp.*, 978 F.2d 146 (4th

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order did not by its terms enjoin proceedings against Northbrook, she would not reach the issue of whether the bankruptcy court had the power under section 105(a) to enjoin enforcement of supersedeas bonds against third parties. 6 F.3d at 321; Celotex App. 21; Northbrook App. 18. As the Fifth Circuit majority noted, however, in subsequent orders the bankruptcy court made clear that its order of October 17, 1990 was intended to, and did, enjoin collection attempts like those made by the Edwards against Northbrook in this case. 6 F.3d at 315 n.3, 318-19; Celotex App. 6 n.3, 15-16; Northbrook App. 5 n.3, 13.

Cir. 1992), *cert. denied*, 113 S.Ct. 1846 (1993). The Edwards disagree, however, with the contention of Petitioners that the Court must exercise its discretionary power of review to resolve these jurisdictional conflicts.

Celotex contends that the Fifth Circuit's order of affirmance must be reversed because "collateral attacks on orders in other circuits are impermissible," unless the aggrieved party first attacks the order in a direct appeal. Celotex Pet. at 16. Similarly, but more precisely, Northbrook asserts that this Court has established that "persons subject to an injunctive order issued by a court *with jurisdiction* are expected to obey that decree until it is modified or reversed, even if they have proper grounds to object to the order." Northbrook Pet. at 15, quoting *GTE Sylvania, Inc. v. Consumers Union of the United States, Inc.*, 445 U.S. 375, 386 (1980) (emphasis added). But neither Celotex nor Northbrook has presented a persuasive reason for reviewing the Fifth Circuit's order. Celotex's description of the law of judgments is simply inaccurate; this Court has expressly condoned the practice of collaterally attacking invalid court orders, particularly when the party complaining of the order was not a named party to the original proceeding. *See, e.g., Martin v. Wilkes*, 490 U.S. 755 (1989), upholding a collateral attack on a consent decree notwithstanding the plaintiffs' failure to intervene and appeal in the original action. Northbrook's statement of the law is more accurate, but less relevant; both the Edwards and the courts below deny that the injunctive order relied upon by Northbrook and Celotex was issued by a court "with jurisdiction," so as to bring the case within the rule against collateral attacks stated by this

Court in *GTE Sylvania*.[3] There is simply nothing novel or extraordinary in the Fifth Circuit's decision or reasoning which would warrant the exercise of discretionary review by this Court.

Northbrook complains that compliance with the Fifth Circuit's order would subject both Northbrook and the Edwards to the imposition of sanctions by the bankruptcy court for violating the bankruptcy court's stay order. Nothing in the bankruptcy court's stay order, however, suggests that Northbrook would be violating the order by passively permitting execution on the bond or even by voluntarily satisfying a demand for payment based on the Fifth Circuit's judgment.[4] Celotex App. 26-29; Northbrook App. 33-36. Northbrook's fear that the Edwards' attempt to enforce the Fifth Circuit's order may prompt the bankruptcy court to sanction the Edwards is more realistic, but Northbrook is hardly the appropriate party to raise this concern.

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[3] As the Fifth Circuit observed, "a generalized and theoretical concern for the bankrupt's estate" will not support the exercise of bankruptcy court jurisdiction over supersedeas bonds. 6 F.3d at 320; Celotex App. 20; Northbrook App. 17.

[4] What probably worries Northbrook is not that it may be held in contempt by the bankruptcy court for paying on the bond, but that it may pay on the bond and then be prevented from enforcing its rights against Celotex. But that is the risk that Northbrook assumed by issuing the bond. As the Fifth Circuit recognized, the very purpose of a supersedeas bond is to shift the risk of the judgment debtor's future insolvency from the prevailing plaintiff (here, the Edwards) to the surety (Northbrook). 6 F.3d at 319; Celotex App. 18; Northbrook App. 15.

Celotex attempts to portray this case as an apocalyptic "collision" between the type of adversarial, narrow-minded "litigation philosophies" that have "fueled the asbestos mess," exemplified by the Fifth Circuit's decision below, and the more equitable "bankruptcy philosophies" that would grant all creditors their "fair share" of what they are owed by a company that has been driven into bankruptcy by hundreds of thousands of claims, exemplified by the bankruptcy court's stay order. Celotex Pet. at 3-4, 11-12. In reality, this case simply involves the Fifth Circuit's recognition that a bankruptcy court's ability to accomplish what it believes to be a fair and socially desirable reorganization is limited, at a minimum, by its own jurisdiction. The Fifth Circuit itself observed that although "using the bankruptcy court as a clearing house for all of these cases may seem desirable as a policy matter, section 105(a) simply does not give bankruptcy courts authority over assets that are not property of the debtor's estate and in which the debtor has no interest." *Edwards*, 6 F.3d at 319; Celotex App. 17; Northbrook App. 14. This Court should come to the same conclusion in holding that its intervention in this case is unwarranted.

The Fifth Circuit correctly affirmed the district court's refusal to "bow in complete obeisance" (6 F.3d at 320, Celotex App. 20, Northbrook App. 17) to a bankruptcy court stay that the bankruptcy court had no jurisdiction or power to order. The Fifth Circuit accurately perceived that to honor the bankruptcy court's attempt to stay execution on supersedeas bonds "would eviscerate the very purpose of these bonds," 6 F.3d at 319, Celotex App. 17, Northbrook App. 14, and defeat the intent of

Rules 62(d) and 65.1 of the Federal Rules of Civil Procedure. Most importantly, the decision below correctly applies the law and does justice as between the parties. The conflict between the decision in *Willis* and the more recent, more thorough, better-reasoned opinion in *Edwards* should not induce this Court to exercise its discretionary power of review.

CONCLUSION

The Petitions for Writ of Certiorari should be denied.

Respectfully submitted.

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April 25, 1994